

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 09-12665

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT MARCH 5, 2010 JOHN LEY CLERK
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D. C. Docket No. 06-01564-CV-4-CLS

ROBERT H. HEPTINSTALL,
WENDELL E. SIMS,
JAMES L. COLLINS,
JACKY T. BLACKWELL,
THOMAS F. CAMPBELL,
J. RUSSELL NEWMAN,
FRED D. WORKS,
as individuals and class representatives,

Plaintiffs-Appellants,

BILLY J. WRIGHT,

Plaintiff,

versus

MONSANTO COMPANY, INC.,
a corporation,
MONSANTO COMPANY SALARIED EMPLOYEES' PENSION PLAN,
MONSANTO EMPLOYEE BENEFITS PLAN COMMITTEE,
MONSANTO COMPANY EMPLOYEE BENEFITS EXECUTIVE
COMMITTEE,
PHARMACIA CORPORATION,
a corporation,
SOLUTIA INC. EMPLOYEES' PENSION PLAN,

SOLUTIA INCORPORATED,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

(March 5, 2010)

Before TJOFLAT, PRYOR and MARTIN, Circuit Judges.

PER CURIAM:

This case presents facts and issues indistinguishable from those already considered and decided by this court in Gilley v. Monsanto Co., 490 F.3d 848 (11th Cir. 2007). Robert Heptinstall and his co-plaintiffs, all former employees of Monsanto Company, Inc. (collectively “Heptinstall”), appeal the district court’s dismissal of their action against the Monsanto Company, Inc. and several related entities.¹ Heptinstall alleged that he was a vested member of the Monsanto Company Salaried Employees’ Pension Plan (“the Plan”) and that the Plan wrongfully denied him his vested benefits in violation of the Employee Retirement

¹ The district court dismissed Heptinstall’s suit for lack of standing to sue under ERISA, but it actually should have dismissed for failure to state a claim. Heptinstall’s claims are due to be dismissed with prejudice for failure to state a claim.

Income Security Act (“ERISA”), 29 U.S.C. § 1001, et seq. In Gilley, this court addressed a factually indistinguishable case involving the same Plan, the same method of calculating years of service, and a plaintiff-employee who started and stopped working for Monsanto at the same time as did Heptinstall (and brought by one of the same attorneys who represent Heptinstall), and held that the plaintiff-employee had not accumulated enough years of service, so his benefits had not yet vested. Gilley controls the outcome here. Heptinstall puts forth various arguments as to why Gilley should not apply, but they all in essence ask us to reconsider that decision, and one panel of this court may not overrule a prior panel’s decision.

Cargill v. Turpin, 120 F.3d 1366, 1386 (11th Cir. 1997).

Accordingly, the district court’s order dismissing Heptinstall’s claim with prejudice is

AFFIRMED.